

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

11/10/04  
P.L.  
31989

**FILE:** B-219360

**DATE:** August 20, 1985

**MATTER OF:** Ellis & Watts

**DIGEST:**

1. Where protester's proposal fails to include documentation as called for by the solicitation explaining how its proposed system would meet certain technical requirements, there is a reasonable basis to find the protester's proposal technically unacceptable.
2. Prime contractor was not obligated to continue discussions with an offeror whose proposal was found technically unacceptable, after the prime contractor had advised the offeror of the principal deficiency in its proposal and given the offeror the opportunity to correct the deficiency.
3. Where principal deficiency in its proposal was disclosed to the protester and, standing alone, supported the prime contractor's finding that the protester's proposal was technically unacceptable, the protester was not materially prejudiced by the prime contractor's failure to disclose other deficiencies in the proposal, since the prime contractor's decision to reject the proposal would not have changed even if the other deficiencies had been corrected.

Ellis & Watts (E&W) protests the rejection of its proposal submitted under request for proposals (RFP) No. K-381832-WW, issued by the Rockwell International

032876

Corporation, Hanford Operations for the design, manufacture and testing of six air filter housings. The RFP was issued by Rockwell in its capacity as the prime contractor responsible for managing, on behalf of the Department of Energy (DOE), an area in Washington State called the Hanford Site, on which nuclear activities are conducted. The protester contends that Rockwell's evaluation of its technical proposal and subsequent rejection of its proposal as technically unacceptable were improper. We deny the protest.

The RFP called for the design, manufacture and testing of six High Efficiency Particulate Air (HEPA) filter housings for use in connection with an air filtration system to be installed in a nuclear power plant located on the Hanford Site. The RFP included the technical specification and drawings to which proposals were to conform. The RFP also required in relevant part that each offeror (1) demonstrate successful performance of similar design/fabrication/test/documentation contracts, and (2) submit with its proposal a comprehensive description of its proposed in-place aerosol test system, including a description of tracer injection and sampling parts, tracer diffusion nozzles, mixing devices, and test results verifying compliance with ASME/ANSI N510, an industry technical standard for field testing of air cleaning systems for nuclear power plants.

The RFP was issued on February 1, 1985, with offers due by March 18. Of the four offers received, only one, submitted by Ionex Research Corporation, was found by Rockwell to meet the RFP technical requirements. On May 10, in an effort to give the protester an opportunity to make its proposal technically acceptable, Rockwell posed several questions to E&W relating to deficiencies Rockwell had found in the E&W proposal; specifically, Rockwell asked E&W to submit a comprehensive description of its in-place aerosol test system, and raised three questions regarding certain design features of the filter housings. In response, on May 15 E&W submitted a description of an in-place testing procedure prepared by its proposed subcontractor, and confirmed that the housing designs it proposed would comply with the RFP specification. After evaluating E&W's proposal in light of its May 15 submission, Rockwell again concluded that the E&W proposal was technically unacceptable. Award to Ionex then was made on May 28.

Under section 21.3(f)(10) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(10) (1985), we consider subcontractor protests only where the subcontract is awarded by or for the government. We consider subcontracts awarded by prime contractors operating or managing DOE facilities as coming within that criterion. See Rohde & Schwarz-Polarad, Inc., B-219108.2, July 8, 1985, 85-2 CPD ¶ \_\_\_\_.

The protester's principal contention is that Rockwell's technical evaluation of its proposal was improper.<sup>1/</sup> The primary basis for Rockwell's determination that E&W's proposal was technically unacceptable was E&W's failure to submit detailed information regarding its in-place aerosol test system, as required by the RFP. While E&W's May 15 submission included a copy of the protester's proposed subcontractor's procedure to test HEPA filters, in Rockwell's view it lacked sufficient details to allow Rockwell to determine E&W's ability to comply with ASME/ANSI N510, the technical standard. Specifically, E&W's submission lacked a detailed description of the tracer diffusion nozzles and mixing devices, and provided no test results verifying its proposed system's compliance with ASME/ANSI N510.

E&W does not directly challenge Rockwell's finding that its proposal lacked sufficient detail, but maintains that, because the testing procedure document was prepared under the supervision of an individual who participated in developing the ASME/ANSI N510 standard, the proposed

---

<sup>1/</sup>In its report to our Office, DOE initially argued that the protest was untimely because it constituted a challenge to the RFP specifications which, under section 21.2(a)(1) of our regulations, 4 C.F.R. § 21.2(a)(1), had to be filed before the closing date for receipt of initial proposals. As discussed in detail above, E&W's contention is that the technical evaluation of its proposal was improper, not that the specifications were defective. As a result, the protest is timely since it was filed within 10 days of when E&W was notified of the bases for rejection of its proposal, as required by our regulations. 4 C.F.R. § 21.2(a)(2).

procedure therefore should be deemed to comply with that standard. E&W also argues that Rockwell should have notified it that its May 15 submission was inadequate, and given E&W another opportunity to submit additional information responsive to Rockwell's concerns.

We find that the protester's failure to explain how its system would meet the RFP's technical requirements for an in-place aerosol test system clearly provided Rockwell with a reasonable basis to conclude that E&W's proposal was technically unacceptable. As discussed above, the RFP required submission of a comprehensive description of the test system and test results showing compliance with the technical standard, and specified the design features of the system to be described. E&W's initial proposal contained no detailed information regarding its test system; the proposal stated only that E&W would engage another firm to accomplish the testing and that the procedure to be used could be provided after award. Even after Rockwell asked E&W to provide the comprehensive description required by the RFP, E&W responded by submitting a general procedure description lacking all the details specifically mentioned in the RFP and without any test results demonstrating compliance with the technical standard.

In addition, we see no basis on which to conclude, as E&W contends, that participation by a member of its proposed subcontractor's staff in developing the technical standard is a substitute for the detailed description and test results required by the RFP to show that the particular procedure proposed by E&W would comply with the technical standard.

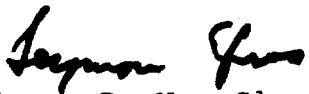
With regard to E&W's contention that Rockwell should have advised E&W that its May 15 submission did not correct the primary deficiency in its proposal, we find that Rockwell was under no obligation to afford E&W another opportunity to revise its proposal. In general, the adequacy of discussions with an offeror is judged by whether the offeror was informed of the deficiency in its proposal and was given an opportunity to revise its proposal. See Trellclean, U.S.A., Inc., B-213227.2, June 25, 1984, 84-1 CPD ¶ 661. A contracting agency, and, in this case, Rockwell, is not required to help an offeror along

through a series of discussions so as to improve its technical rating until it equals the other offers. See Stewart & Stevenson Services, Inc., B-213949, Sept. 10, 1984, 84-2 CPD ¶ 268. Here, not only were the requirements with regard to the test system evident from the face of the RFP itself, but Rockwell notified E&W of the deficiency after its initial proposal was found technically unacceptable. Thus, in our view, E&W was given ample opportunity to correct the primary deficiency in its proposal.

While the primary basis for Rockwell's rejection of the protester's proposal was the lack of sufficient information regarding its testing system, Rockwell also found other deficiencies in the proposal relating to E&W's prior experience with similar contracts and its compliance with technical requirements for detail fabrication drawings and the design of the filter retraction device. E&W contends that Rockwell did not advise it of all the deficiencies Rockwell found in the proposal, and disagrees with Rockwell's evaluation of its proposal in these other areas.

In our view, E&W has presented no evidence showing that Rockwell's findings regarding these additional deficiencies were unreasonable. We need not consider Rockwell's evaluation in detail, however, since, even if the additional deficiencies had been corrected, E&W would not have been selected for award due to its test system deficiency. See Logistical Support, Inc., et al., B-208722, et al., Aug. 12, 1983, 83-2 CPD ¶ 202. Similarly, E&W was not materially prejudiced as a result of not being advised of all the deficiencies found by Rockwell, since Rockwell's determination that E&W's proposal was technically unacceptable would not have changed even if the other deficiencies had been resolved. See Dynalelectron Corp.--PacOrd, Inc., Mar. 18, 1985, 85-1 CPD ¶ 321.

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel